

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	
COUNTY OF RICHLAND	)	STATE BOARD OF EDUCATION
	)	
In Re: Imagine North Main Academy	)	FINAL ORDER
	)	08-CS-01
_____	)	

### History of the Case

This is an appeal to the State Board of Education (State Board) by Imagine North Main Academy Charter School (Charter School) of the Richland County School District One Board of Trustees (Local Board) decision to deny issuing a charter, pursuant to the authority of S.C. Code Ann. § 59-40-70 (Supp. 2007) and 24 S.C. Code Ann. Regs. 43-600. It is an appeal on the record with oral argument. The hearing was held before the State Board on May 13, 2008. The Charter School appeared and was represented by Kirby Shealy, Esquire and Samuel Mokeba, Esquire. The Local Board appeared and was represented by Charles J. Boykin, Esquire.

### Scope and Standard of Review

State Board of Education Regulation 43-600 defines the scope of review by the State Board in reviewing decisions of local school boards as:

"The State Board of Education may affirm or reverse the decision of the local school board of trustees if it determines that the local school board of trustees' decision:

- (1) violated constitutional or statutory provisions,
- (2) exceeded the authority of the local school board of trustees,
- (3) was based upon an error of law,
- (4) is clearly erroneous in view of the substantial evidence on the record, or
- (5) was arbitrary or capricious."

24 S.C. Code Ann. Regs. 43-600 (as amended 2003).

## Background

The Charter School submitted its application to the Charter School Advisory Committee (CSAC) on November 19, 2007. The CSAC approved the application and recommended approval of the application by letter dated March 7, 2008. The Local Board held a hearing regarding the charter application on April 4, 2008, and voted to deny the charter. The Local Board's order was issued on April 10, 2008, and contained the following conclusions:

1. The Board believes that too many charter schools will strain and overtax the District's ability to provide meaningful educational services to students in the District and to those in the charter schools.
2. The Board believes that Imagine North Main Academy's program does not offer any innovative services or curriculum that differs from the District's public schools.
3. The Board believes that Imagine North Main Academy is a duplication of services but will require the District's staff to provide needed educational services to yet another location.
4. The Board believes that Imagine North Main Academy will adversely affect a specific targeted impact area within the District.
5. The Board believes that Imagine North Main Academy will adversely affect students in the priority schools in the impact area because the District will be required to split remedial time between locations.
6. The Board believes that Imagine North Main Academy will adversely affect the remaining students in that specific targeted geographic impact area.
7. The Board believes that Imagine North Main Academy will adversely affect the students through programmatic losses in schools located in the targeted geographic impact area.
8. The Board believes that a reduction in enrollment in the targeted geographical impact area will reduce the number and percentage of free and reduced students. The numbers and percentages are used to qualify for certain state and federal funding such as the Reading is Fundamental Program, E-rate funding, Title I funding and state grants.

9. The Board believes that Imagine North Main Academy will adversely affect the students through loss of personnel or personnel services in the targeted geographical impact area and throughout the District.

10. The Board believes that Imagine North Main Academy will have a direct adverse impact financially on the targeted geographic impact area.

11. The Board believes that the District has no alternative financial methods to reduce the negative financial impact on the targeted geographic impact area that would occur with the opening of Imagine North Main Academy.

#### Issues on Appeal

The Charter School filed a notice of appeal with the State Board on April 15, 2008. The Charter School filed a follow-up notice letter on April 18, 2008, raising the following issues on appeal:

1. Are the District's factual findings with respect to Imagine North Main's application clearly erroneous in view of the substantial evidence on the record?
2. Is the District's conclusion that the Imagine North Main did not offer any innovative services and or curriculum that differ from the District's public school clearly erroneous in view of the substantial evidence on the record?
3. Is the District conclusion that Imagine North Main would strain and overtax the District's ability to provide meaningful educational services clearly erroneous in view of the substantial evidence on the record?
4. Is the District's conclusion that Imagine North Main is a duplication of services clearly erroneous in view of the substantial evidence on the record?
5. Did the District commit an error of law in failing to consider all options available to it to reduce the allegedly adverse financial impact of Imagine North Main?
6. Did the District commit an error of law in failing to consider the net fiscal impact of Imagine North Main, including the fiscal benefits that it may bring to the District?

7. Did the District violate constitutional or statutory provisions or exceed its authority by founding its order on bases that were not introduced or discussed at the hearing of April 4, 2008?

### Analysis

The Charter School raised numerous issues on appeal; however, we need only rule on whether the conclusion by the Local Board that the Charter School will have an adverse affect on other students in the school district since that issue is dispositive of this case. In order to overturn the decision of the Local Board, this Board must determine that the Local Board's determination is "clearly erroneous in view of the substantial evidence on the record." 24 S.C. Reg 43-600; *Beaufort County School District v. Lighthouse Charter School Committee*, 335 S.C. 230, 516 S.E.2d 655 (1999). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)

S.C. Code Ann. § 59-40-70 (Supp. 2007) states that a local school board of trustees may deny an application if it finds that the school would adversely affect, "as defined in regulation, the other students in the district." By regulation, the State Board defined adverse affect as:

"A local school board of trustees may deny an application if the charter school would adversely affect the other students in the district.

- (A) The local school board of trustees must demonstrate adverse impact on students. The impact must be specific and must have a negative affect on students. If the local school board of trustees finds that the charter school would adversely affect other students of the district, the written explanation of the reasons for denial required by § 59-40-70(C) must describe detrimental effects upon other students of the district.
- (B) If the district is claiming an adverse impact based upon the redirection of funding to the charter school, the district must demonstrate that the funds being redirected to the charter school will have a direct negative impact on students.

- (1)The district must show options it has considered in an effort to reduce the adverse financial impact of the charter school.
- (2)The district has considered the net fiscal impact of the charter school, including the fiscal benefits that the charter school may bring to the district."

24 S.C. Code Ann. Regs. 43-601 (as amended 2003)

In reviewing the Local Board's decision that the school will have an adverse impact on students, we must first consider whether the adverse impact claimed is based the redirection of funding. If the adverse impact is based on the redirection of funding, section IV (B) of Regulation 43-601 requires the local board to show that it considered options to reduce the adverse financial impact of the school and also consider the net fiscal impact of the charter school, including the fiscal benefits the school must bring. However, if the adverse impact shown is not based upon the redirection of funding, it needs to be evaluated under section IV (A). Under IV (A) the Local Board must show that "the impact must be specific and must have a negative affect on students."

Conclusions 4-9, as referenced above, are not based on the loss of funding. Those broad conclusions are based upon the evidence that was outlined in detail in the Local Board's order and as submitted as part of the record as the recommendation of the administration. The Local Board outlined in detail the impact the proposed school would have on the students enrolled in the neighboring schools. Within a two mile radius from the proposed location of the charter school there are three other elementary schools: Hyatt Park Elementary School, Arden Elementary School, and E.E. Taylor Elementary School. The Local Board projected based on the parent surveys in the Charter School's application that that 65-75% of the students will come from the area that includes these three schools. The Charter School's projected enrollment for the first year of operation is 296.

The Local Board considered the impact that decreased enrollment would have on E.E. Taylor Elementary School. Based in the projected enrollment, the Local Board concluded that they may have to limit one teacher per grade level and this would cause the teachers to lose their "peer groups for planning, lesson design and reflection which would impact student achievement." (Order p. 7-8). Currently all three elementary schools have gifted and talented programs. There are ninety-four students being served by those schools. With the decrease in enrollment, the Local Board may have to combine classes and move toward a Center Approach instead of a school based program. (Order p. 9).

The Local Board also noted adverse impact with regard to the special education students that are currently enrolled in the three elementary schools. There are 227 students being served in the area that the Local Board identifies as the "target area." In a school with decreased enrollment to one teacher per grade level, all of the mainstreamed special education students of that particular grade would have to be served by the same teacher. This can have a direct negative impact on the quality to serve those students individually as well as the other students in the classroom, according to the Local Board. (Order p. 11). The Local Board also stated that the loss of enrollment could jeopardize the Visual and Performing Arts Program that it has in each of the three neighboring elementary schools. The staffing of that program is directly impacted by the number of students enrolled in the school.

With regards to Arden Elementary School, the Local Board noted that there are several programs that are dependent on a certain enrollment. Those programs include: 21<sup>st</sup> Century Grant Program, Math Coach Program, FBI Mentoring Partnership, etc. (Order p. 14). All of those programs require a minimum student enrollment.

The Local District asserts that based on the enrollment projections, the loss of students will cause a decrease of services for the remaining students in the three other schools in the target area. The decrease of services are not based on loss of funds, but are based on the loss of students. This State Board recognizes that a loss of students arguably equals a loss in funds. However, the funding has not been put forth as the primary reason for the loss in programs and services. The Local Board sets forth the likely and reasonable scenario that when a school faces a significant loss in population, it simply cannot maintain the level of services that it previously maintained, if those services were based on enrollment numbers.

The Charter School argues that the Local Board erred by not meeting the requirements of Regulation 43-601 (IV)(B) which requires that a local board must "show options it has considered in an effort to reduce the adverse financial impact of the charter school" and consider the "net fiscal impact of the charter school, including the fiscal benefits that the charter school may bring to the district." The Local Board addressed the financial impact of the Charter School in conclusions 1, 10, and 11. To sustain the Local Board on these conclusions alone, the State Board would have to be satisfied that the Local Board did analyze the impact in accordance with Regulation 43-601 (IV)(B). The record does not include evidence that the Local Board considered the fiscal benefit of the Charter School. Had the Local Board relied solely on the financial impact, the State Board would have to conclude that it did not meet its burden under Regulation 43-601. The Local Board went beyond the financial impact and set forth in detail specific, non-financial impact on students. Therefore, the failure to consider the fiscal benefit of the school does impact the State Board's decision.

## Conclusion

We find that in view of the record as a whole, there has not been a showing by the Charter School that the Local Board's decision to deny the charter based upon adverse impact on the students was clearly erroneous in view of the substantial evidence in the record. Therefore, the order of the Local Board is affirmed.

South Carolina State Board of Education  
By:

\_\_\_\_\_/s/\_\_\_\_\_  
Al Simpson  
Chair

Columbia, South Carolina  
May 30, 2008